

# KEEPING CURRENT

April 13, 2021

## Full Names of Parties Now Published in HPARB Complaint Review Decisions

By Lad Kucis

Founded in the 1920s, Gardiner Roberts LLP has grown to become a strategically placed mid-sized business law firm with a diverse client base which includes several of Canada's largest banks, public companies including mining, high tech and software companies, real estate enterprises, lenders and investors.

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Historically, the names of parties in complaint reviews before the Health Professions Appeal and Review Board (HPARB) were not included on the version of the Decision and Reasons made available to the public, which appears on the legal database, canlli.org. Rather, only the initials of the parties were published.

However, on November 1, 2019, HPARB released a [Practice Direction: Public Access to Proceedings](#), which provided that effective immediately, all HPARB decisions, including complaint reviews, will be published with the full names of the parties unless otherwise ordered by HPARB. The rationale was the identification of the parties will enhance public access to HPARB proceedings and further the principles of openness, transparency and accountability.

As set out in the Practice Direction, a party can request an order that restricts the publication of an individual's identity (i.e. an anonymization order). In considering such a request, which

must be made either before or at the complaint review, HPARB will consider the following:

1. Whether such an order is necessary in order to prevent a serious risk to the proper administration of justice because reasonably alternative measures will not prevent the risk; and
2. Whether the benefits of the proposed restriction to the public nature of HPARB's proceedings outweighs the harm to the parties and the public.

In making its determination, the Practice Direction further provides that HPARB may consider, among other relevant factors, whether:

- the safety of a person may be jeopardized;
- matters involving public security may be disclosed;

- matters of such a nature would be disclosed such that the harm created by public disclosure of this information outweighs the principle that hearings must be open to the public;
- the matter involves a complaint of misconduct of a sexual nature by a regulated health professional;
- the matter involves the identities of minors; or
- the matter involves the personal health information of persons who are not parties.

The Practice Direction also clarifies that concerns regarding the reputation of a regulated health professional is not in and of itself sufficient reason to warrant an anonymization order and it still must be demonstrated that the anticipated harm created by disclosure of information outweighs the benefit of having open public proceedings.

Based on our review of the Practice Direction, we believe that in most cases, it will be very difficult to obtain an anonymization order. As such, regulated health professionals need to be aware of the fact that there now exists a significant likelihood that their full names will be revealed in HPARB complaint review decisions, which are published online.

Although we appreciate the importance of having open and transparent proceedings, we do not believe that the prior practice of using initials rather than full names interfered with this objective, especially since regulatory colleges already post summaries of matters where there was any type of action taken against a regulated health professional flowing from a complaint

(i.e. an oral caution or a specified continuing education and remediation plan).

Furthermore, we are very concerned about the potential legal and reputational implications for regulated health professionals, as members of the public will now have access to all HPARB complaint review cases involving a practitioner, irrespective of the outcome. We believe it is highly unfair that a member of the public can raise a baseless claim against a regulated health professional and the allegations are then published on a legal database, even if both the regulatory college and HPARB decide that they have no merit. In our view, this could lead to additional complaints against a regulated health professional or at minimum, could undermine their reputation in the eyes of patients and the public as a whole.

On a related note, we can imagine that many complainants would not want their own identities revealed in an HPARB complaint review.

Ultimately, legal counsel for regulated health professionals must ensure that their clients are made aware of the new rules flowing from the Practice Direction and should consider requesting an anonymization order, keeping in mind the relevant factors set out above.

### **Contact us**

If you have a health law matter and are in need of legal advice, please contact Lad Kucis, at 416.864.3114 or [lkucis@grllp.com](mailto:lkucis@grllp.com).

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